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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

## Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

CC Docket No. 96-98

# Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers

CC Docket No. 95-185

To: The Commission

## JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION

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## SUMMARY

Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. hereby petition the FCC to reconsider and clarify certain rules adopted in the *Local Competition Order*. This landmark decision is generally faithful to Congress's goals in passing the Telecommunications Act of 1996 (the "1996 Act") of opening local exchange and exchange access markets to facilities-based competition. Certain modifications, however, are vital to facilitate just, reasonable and nondiscriminatory LEC-CMRS interconnection.

Having effectively abrogated existing cellular-incumbent LEC interconnection contracts as unlawful and contrary to the public interest, the FCC must now extend interim pricing relief to cellular carriers to remedy harm caused by those unlawful contracts. Otherwise, the existing rules unfairly hold cellular licensees to unconscionable interconnection contracts for a potentially extended period of time and provide incumbent LECs further incentive to delay renegotiation. Comprehensive and immediate reform of unlawful ILEC-cellular interconnection contracts is central to the pro-competitive purposes of the 1996 Act and other provisions of the Communications Act.

The FCC must amend its definition of a local calling area. The current definition based on the MTA, while suitable for PCS providers, fails to reflect the unique development of cellular networks. The FCC should allow cellular operators with multicellular systems in multiple MSAs or RSAs to define their local calling areas based on the contiguous footprint of wireless operations in adjacent markets and existing network architectures. The FCC also should allow cellular carriers to develop their own rating point system to define end user local and toll charges.

The FCC should clarify that symmetrical compensation means that ILEC-cellular transport and termination rates reflect the full functionality of cellular networks. Symmetrical compensation requires that a tandem-to-tandem charge apply when cellular networks interconnect with an ILEC at the tandem switch because cellular networks provide transport functions between cells and the mobile telephone switching office.

The FCC should encourage states to consider the impact of the 1996 Act's interconnection reforms on cellular-ILEC traffic patterns as a basis for adopting a bill and keep presumption. The competitive pricing reforms of the 1996 Act introduce new incentives that encourage balanced cellular-ILEC traffic and justify a bill and keep presumption.

The FCC should affirmatively prohibit ILECs from introducing separate or additional interconnection charges when a cellular carrier requests only transport and termination functions. The FCC also should require ILECs to file all existing interconnection contracts before the end of the year to expedite the extension of favorable rates, terms and conditions in existing contracts to all requesting telecommunications carriers.

Finally, as a logical outgrowth of the *Local Competition Order*'s finding that Sections 2(b) and 332 of the Budget Act of 1993 are a jurisdictional basis for LEC-CMRS interconnection regulation, the FCC should clarify that the nature of this jurisdiction is comprehensive and plenary consistent with its Section 2(a) interstate authority.

Accordingly, the FCC should adopt these modifications to maximize the potential of advanced cellular networks, and to promote Congress's pro-competitive vision in passing the 1996 Act.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	
	)	
Interconnection between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio	)	
Service Providers	)	

To: The Commission

**JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION**

Comcast Cellular Communications, Inc. ("Comcast Cellular") and Vanguard Cellular Systems, Inc. ("Vanguard Cellular") (or collectively, "Petitioners"), by their attorneys and pursuant to Section 1.429 of the FCC's rules, 47 C.F.R. § 1.429, hereby submit their joint petition for reconsideration and clarification of the above-captioned proceeding.<sup>1/</sup> For the reasons discussed below, Comcast Cellular and Vanguard Cellular urge the FCC to reconsider or clarify the rules specified herein with respect to their impact on commercial mobile radio service ("CMRS") providers.

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<sup>1/</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185 (released August 8, 1996) ("*Local Competition Order*"). *Federal Register* notice of the *Local Competition Order* appeared on August 29, 1996. This petition is filed on the first business day following the thirtieth day after publication. Thus, it is timely filed.

## I. INTRODUCTION

In the *Local Competition Order*, the FCC set the ground rules for the momentous process of opening local exchange and exchange access markets to facilities-based competition, as envisioned by Congress in enacting the Telecommunications Act of 1996 (the "1996 Act"). The local competition rules and national pricing standards for interconnection adopted in the *Local Competition Order* generally sound the correct note of pro-competitive reform, as required by the statute. To fully realize the goals of the 1996 Act, however, the FCC must modify or clarify specific aspects of the interconnection and pricing framework established in the *Local Competition Order* to remedy particular problems associated with anticompetitive LEC-to-CMRS interconnection arrangements.

Cellular-specific reforms in particular are essential to enable cellular licensees to contribute to the achievement of Congress's goal of rapidly deploying advanced telecommunications.<sup>2/</sup> Comcast Cellular plans to introduce the benefits of upgraded digital networks to its cellular customers. Furthermore, Comcast Cellular's participation in PCS markets will help to achieve advanced wireless interconnectivity for a broad range of customers and applications. Comcast Cellular also is enhancing its cellular offerings to include calling-party-pays and signaling system 7 ("SS7") features. Similarly, Vanguard hopes to provide its

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<sup>2/</sup> The legislative history states that the 1996 Act is intended:

. . . to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . . .

See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1, *reprinted in* 142 Cong. Rec. H1078 (daily ed. January 31, 1996) ("1996 Act Conference Report").

customers with advanced services that take advantage of the features of SS7. Vanguard also is deploying cellular digital packet data technology ("CDPD"). Absent the necessary clarifications and modifications recommended in this Petition, however, incumbent LECs will continue to exercise market power to prevent cellular carriers from obtaining just, reasonable and nondiscriminatory interconnection necessary to maximize the potential of such advanced cellular networks.

**II. CELLULAR CARRIERS ARE ENTITLED TO INTERIM RATE RELIEF TO REMEDY RATES IN ILEC-TO-CELLULAR INTERCONNECTION CONTRACTS THAT THE FCC HAS FOUND TO BE UNLAWFUL.**

The FCC correctly held in its *Local Competition Order* that existing interconnection contract rates predating the 1996 Act are presumptively unlawful.<sup>3/</sup> This determination includes existing LEC-cellular interconnection contracts, which the FCC decided should be renegotiated under the guidelines of the FCC's rules. Based on this action, the FCC must clarify its rule to provide interim pricing relief to cellular carriers to remedy payment of unlawful interconnection contract rates during renegotiation.

In the *Local Competition Order*, the FCC ruled that an existing LEC-to-CMRS contract may be renegotiated "with no termination liabilities or other contract penalties," if the contract does not provide reciprocal compensation for transport and termination of local

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<sup>3/</sup> See *Local Competition Order* at ¶¶ 782-786 (in establishing default pricing proxies for LEC-competitor interconnection, the FCC rejects "use of rates in interconnection agreements that predate the 1996 Act as a proxy-based ceiling for interconnection and unbundled rate elements [because] [t]hese existing interconnection agreements were not reached in a competitive market environment.").

telecommunications traffic. *See* 47 C.F.R. § 51.717(a); *Local Competition Order* at ¶¶ 1094-5. By so doing, the FCC also effectively abrogated existing contract rates.<sup>4/</sup>

Under statutory and case precedent, however, the limited relief afforded cellular carriers during contract renegotiations is inconsistent with the FCC's express findings. The FCC cannot find contract rates, terms or conditions to be unlawful and yet allow them to remain in effect for an indefinite period of time. The FCC has the authority to abrogate all or part of an inter-carrier contract if it finds that a rate, term or condition in the contract is unlawful. A contract rate is unlawful if it "adversely affects the public interest." *See* 47 U.S.C. § 201(b). Thus, when the FCC abrogates a rate, term or condition in an existing contract as unlawful and contrary to the public interest — as it has done with respect to LEC-cellular interconnection contracts in the *Local Competition Order* — parties harmed by the unlawful contract provisions should be afforded the same interim pricing relief available to other telecommunications

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<sup>4/</sup> *See Local Competition Order* at n.2634 (the FCC "has the power to prescribe a change in contract rates when it finds them to be unlawful . . . and to modify other provisions in private contracts when necessary to serve the public interest") (quoting *Western Union Tel. Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987)). The FCC also found that:

in many cases, incumbent LECs appear to have imposed arrangements that provide little or no compensation for calls terminated on wireless networks, and in some cases imposed charges for traffic originated on CMRS providers' networks, both in violation of section 20.11 of [the FCC's] rules.

*See id.* at ¶ 1094.

carriers.<sup>5/</sup> This is consistent with the FCC's authority to establish interim pricing standards under the 1996 Act and other provisions of the Communications Act.<sup>6/</sup>

The fresh look rule adopted in the *Local Competition Order*, however, can be read to severely limit the remedy available to cellular carriers who have been paying and continue to pay unlawful termination rates to ILECs under existing contracts. One interpretation of the *Local Competition Order* is that all that a cellular carrier may do is charge the ILEC "the same rates for transport and termination of local telecommunications traffic" that the ILEC assesses

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5/ For example, the FCC has abrogated rates in special access tariffs as contrary to the public interest where they would "place an excessive burden on . . . consumers." See *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, 57 Rad. Reg. 2d (P&F) 188, 209-210, 214 (1984), *rev'd and remanded on other grounds sub nom.*, *Western Union Tel. Co. v. FCC*, 815 F.2d 1495, 1501-2 (D.C. Cir. 1987); see also *Mississippi Industries v. FERC*, 808 F.2d 1525, 1553 (D.C. Cir. 1987). In the *Expanded Interconnection Fresh Look Order*, the FCC abrogated long term special access contracts for a limited period of time to allow competitive access providers and other high-volume users to realize the access pricing benefits of the FCC's newly adopted expanded interconnection regime. The FCC reasoned that continued enforcement of long term inter-carrier access contracts without a fresh-look period would "tend to 'lock up' the interstate access market." See *Expanded Interconnection With Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-141, 8 FCC Rcd 7341, 7346-7 (1993) ("*Expanded Interconnection Fresh Look Order*"). Similarly, the FCC has abrogated exclusive dealing provisions of contracts between airline carriers and a monopoly provider of air-to-ground radiotelephone service to enable the airlines to negotiate contracts with newly-licensed competing service providers of air-to-ground service under the FCC's open-entry policy. See *Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands*, GEN Docket No. 88-96, 6 FCC Rcd 4582, 4583 (1991).

6/ The FCC and the courts have long-recognized the FCC's statutory authority and the administrative and competitive benefits of imposing an interim interconnection rate pending resolution of complex and potentially protracted cost inquiries necessary ultimately to set a permanent, reasonable rate. See *Lincoln Tel. & Tel. v. FCC*, 659 F.2d 1092, 1107-8 (D.C. Cir. 1981); *Exchange Network Facilities for Interstate Access*, 93 F.C.C.2d 739, 758-763, *aff'd sub nom.*, *GTE Sprint Communications Corp. v. FCC*, 733 F.2d 966 (D.C. Cir. 1984); *Western Union Tel. Co.*, 1 FCC Rcd 829, 833-4 (1986); see also *Ex Parte* Letter, from Leonard J. Kennedy, Counsel for Comcast Cellular Communications, Inc., to the Chairman, FCC, filed in CC Docket Nos. 95-185 & 96-98 on July 25, 1996.

upon the cellular carrier pursuant to the contract, until a new agreement has been either arbitrated or negotiated and has been approved by a state commission. *See* 47 C.F.R. § 51.717(b). In other words, the cellular carrier is given the right to charge the ILEC a rate that has been found unlawful. This "remedy" thus is inconsistent with precedent and the entire thrust of the *Local Competition Order* because it would hold the cellular carrier to paying an unlawfully high rate for reciprocal transport and termination. Despite this, the FCC's rules exclude carriers with "existing contracts" from receiving interim pricing relief. *See* 47 C.F.R. § 51.715(a)(1).

Given that the FCC's order has effectively abrogated the pricing terms of existing LEC-cellular interconnection contracts, the FCC's failure to provide interim relief to cellular operators during renegotiation is inexplicable and must be modified. Without some clarification, ILECs would remain free to exploit their excessive bargaining power to enforce indefinitely unconscionable rates against cellular carriers. Failure to explicitly provide interim relief simply permits ILECs to stall negotiations and arbitrations and delay implementation of cost-based interconnection unless or until all court appeals are exhausted.

Moreover, absent interim pricing relief, cellular carriers will be placed at a serious discriminatory disadvantage vis-a-vis other requesting telecommunications carriers who receive such relief, including PCS and covered SMR operators with whom cellular operators are entitled to regulatory parity.<sup>7/</sup> Without explanation, the FCC's order concludes that the fresh look policy "will place wireless carriers with non-mutual, existing agreements on the same footing as other

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<sup>7/</sup> *See* 47 U.S.C. § 332(c); *see also Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411 (1993).

new entrants . . . ." See *Local Competition Order* at ¶ 1095. To the contrary, however, the current fresh look rule discriminates against cellular carriers with existing contracts — contracts the *Local Competition Order* acknowledges are unlawful — by excluding them from interim pricing relief afforded new entrants that do not have "existing contracts" with ILECs. It would be entirely inconsistent with basic fairness and nondiscrimination policies to force cellular carriers to pay existing contract rates for the duration of a negotiation and arbitration period under Section 252 of the 1996 Act, when these rates presently have been found to be unlawful.

Further, delaying award of interim pricing relief to cellular carriers also is inconsistent with the purpose of the 1996 Act and the FCC's rules to expedite renegotiation of just, reasonable and nondiscriminatory ILEC-cellular interconnection contracts. Fixing as early a date as possible for effectiveness of interim rate relief will mitigate any harm caused by delay during renegotiation of existing anticompetitive interconnection contracts. The FCC should therefore establish that the effective date of interim pricing applies to cellular carriers who are paying unlawful interconnection contract rates as of the earlier of either the effective date of the FCC's rules or the submission of an individual request for interconnection under Section 252 of the 1996 Act. Adoption of such a uniform rule containing a date certain for the establishment of interim rates will expedite reform of unlawful interconnection contracts as Congress intended because the ILEC incentive to stall the negotiations surrounding a new contract will be removed.

Accordingly, the FCC must rule that cellular licensees are entitled to the same interim pricing relief accorded all other requesting telecommunications carriers under the 1996 Act. In this regard, the FCC also should refine its definition of what constitutes an "existing contract"

for purposes of determining when a requesting carrier is excluded from receiving interim pricing relief. For example, if a contract is deemed to "exist" even though the termination rate provision has been abrogated as unlawful, then the carrier may be foreclosed from receiving interim pricing relief. The FCC can most straightforwardly address this issue by amending its interim pricing rule to exclude only those requesting telecommunications carriers with existing contracts that have not been abrogated in whole or in part by the FCC and that otherwise comply with the FCC's pricing standards.

### **III. THE FCC MUST CLARIFY ITS LOCAL CALLING AREA DEFINITION TO CONFORM WITH CMRS NETWORKS.**

#### **A. The FCC Must Clarify the Local Calling Area Definition to Accommodate Cellular MSAs and RSAs.**

The FCC must modify the definition of a CMRS "local calling area" to the extent that it limits the definition of a local calling area to a Metropolitan Trading Area ("MTA") because cellular operator licensing is not based on MTAs. The FCC should modify the local calling area definition to allow cellular licensees with multiple market systems to define their local calling area based on adjacent MSAs and RSAs within the contiguous footprint of their network operations and taking into consideration existing network architecture.

As the FCC properly recognized, the definition of a local calling area is important because it determines when reciprocal compensation arrangements are available to CMRS providers pursuant to Section 251(b)(5) of the 1996 Act. 47 U.S.C. § 251(b)(5); *Local Competition Order* at ¶¶ 1034-5. The FCC's rules define local telecommunications between CMRS providers and landline LECs as "telecommunications traffic . . . that, at the beginning

of the call, originates and terminates within the same Major Trading Area . . . ." 47 C.F.R. § 51.701.

While the Petitioners agree in general with the FCC's approach, ambiguities in this rule may result in the improper assessment of an additional toll or access charge upon an interconnecting CMRS provider for what otherwise ought to be treated as a local CMRS call subject to reciprocal compensation. Using the "point of interconnection", for example, to define point of origin or termination of a local call is problematic because it may have no correlation with the actual location of a CMRS customer or the interface with the landline LEC network.<sup>8/</sup> CMRS networks often have only one point of interconnection for exchange of traffic with the landline network, and this point of interconnection may not be located within the same MTA as the "local" call. For example, one of Comcast Cellular's mobile telephone switching offices ("MTSO") is located outside of the Philadelphia MTA and serves cellular customers both inside and outside the Philadelphia MTA. Under the point-of-interconnection standard, in many cases, a local call on Comcast Cellular's system routed through its MTSO would be considered to be

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<sup>8/</sup> The *Local Competition Order*'s attempt to address this definitional problem by means of adopting a policy of "administrative convenience", while laudable, may do more harm than good because it does not address all potential CMRS network configuration circumstances. This policy provides that, for purposes of determining whether the points of origin and termination of a call between LEC and CMRS networks are within the same MTA and the call is therefore "local":

the location of the initial cell cite when a call begins shall be used as the determinant of the geographic location of the mobile customer. As an alternative, LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.

*See Local Competition Order* at ¶ 1044.

a toll call because the MTSO is outside the Philadelphia MTA.<sup>9/</sup> Use of the MTA boundary also does not correlate with Vanguard Cellular's local operations. The boundary between the Philadelphia and New York MTAs runs right through the center of Vanguard Cellular's Pennsylvania SuperSystem.<sup>10/</sup>

Accordingly, the FCC should modify the existing local calling area rule to accommodate cellular systems that predate the adoption of the MTA concept.<sup>11/</sup> The FCC should allow cellular carriers with multiple market systems to define their local calling areas based on adjacent MSAs and RSAs within their contiguous footprint of operation, if the cellular system operator treats these areas as local for the purpose of network design. Such a modification is proper because it would allow cellular providers, who are in the best position to identify the nature of traffic on their networks, to define the points of origin of wireless calls. Furthermore, giving the cellular provider the discretion to define where within their networks a LEC-to-CMRS call originates properly accommodates the flexibility necessary to configure individualized wireless networks.

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<sup>9/</sup> Defining point of origin based on cell site also is problematic because it is administratively burdensome to track each call origination by cell site, which may number in the thousands in a typical MTA.

<sup>10/</sup> For example, a local call on Vanguard Cellular's Reading, Pennsylvania system would be considered a toll call because the MTSO is located outside the Philadelphia MTA boundary in Allentown, which is in the New York MTA. This is an improper result, especially because of the close proximity of Reading and Allentown, geographically, economically and socially. Another example would be a local call from Vanguard Cellular's PA-10 East market to Reading, Pennsylvania, which would be considered a toll call because the MTSO is located in Harrisburg, but PA-10 East is located in the Washington-Baltimore MTA.

<sup>11/</sup> An MTA-based local calling area is likely to be satisfactory for PCS systems, which will evolve their networks based on MTA standards, but do not correlate to the MSA-RSA boundaries which are the cellular norm.

**B. The FCC Should Adopt a Rule that Allows CMRS Providers to Control Rating Points for Purposes of Determining When a Local, as Opposed to Toll Charge, Applies to Calls to a CMRS Customer.**

The FCC should specify that the CMRS provider has the right under the 1996 Act and the FCC's rules to determine the rating points associated with points of origin or termination of local calls between CMRS and landline LEC networks for purposes of assessing end user local or toll charges. Absent such a clarification, incumbent LECs may exploit their monopoly incentive to define the point of origin or termination based on landline calling patterns that have no correlation to a "local" call but are calculated to funnel an end user toll charge or access charge to the incumbent LEC and forestall the development of CMRS as a direct competitor to incumbent LEC landline services.<sup>12/</sup>

Moreover, allowing CMRS providers to control and aggregate rating points to reflect the unique local traffic attributes of their networks would comport with the 1996 Act's overall goal of stimulating competition in advanced telecommunications services.<sup>13/</sup> Just as local calling area plans for landline LEC networks developed based on the "plain old telephone service" ("POTS") standard for landline communications,<sup>14/</sup> CMRS providers must be accorded similar flexibility to configure their own network signaling and access points for purposes of establishing rating points appropriate to local wireless calling standards.

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<sup>12/</sup> See, e.g., *Ex Parte* Letter, from Leonard J. Kennedy, Counsel for Comcast Cellular Communications, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission, filed on July 25, 1996, in CC Docket Nos. 95-185 and 96-98.

<sup>13/</sup> See note 2 *supra*.

<sup>14/</sup> See *id*.

As with several other issues the FCC has faced in this proceeding, the issue of rating traffic to CLECs and CMRS providers arises because of differences in network architecture. Incumbent LEC networks, which depend on multiple end offices to serve large geographic areas, associate NXX codes with each of those offices and, as a result, have multiple rating points over their service territories. CLECs and CMRS providers, on the other hand, typically cover large areas with a single switch and, traditionally, would have a single rating point, located at that switch, that would be used for all of their customers.

In an area the size of a cellular MSA (which is similar to the areas covered by many CLEC switches), an incumbent LEC will have many local calling areas, and the location of a CMRS provider's or CLEC's switch may be treated as local only to a small minority of the incumbent LEC's customers. This has two consequences. First, if the state regulator requires the use of local calling areas smaller than the entire coverage area of a CLEC switch, locating the rating point at the CLEC switch will turn many CLEC-to-ILEC calls into toll calls, regardless of the physical locations of the calling and called parties.<sup>15/</sup> Second, calls by incumbent LEC customers from outside the local calling area where the CLEC or CMRS switch is located will be treated as toll calls, again regardless of the physical locations of the parties to the call.<sup>16/</sup> In the first case, CLECs and CMRS providers would be unable to provide services

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<sup>15/</sup> This will not occur for CMRS providers because the FCC has defined the CMRS local calling area.

<sup>16/</sup> This concern is not affected by the FCC's decision to permit CMRS providers to use either the point of interconnection or the location of the cell where a call originates in determining whether a call is "local" for purposes of determining whether transport and termination applies. *Local Competition Order* at ¶ 1044. The determination of whether transport and termination compensation applies affects only the relationship of the *two carriers*. It does not affect the amounts that a carrier charges its *customers*.

that were comparable to those offered by incumbent LECs, solely because they use more advanced and efficient network architectures. In the second case, CMRS providers and CLECs would be disadvantaged because it would, on average, cost more to call their customers than to call the customers of the incumbent LEC.<sup>17/</sup> While there may be circumstances in which a CLEC or CMRS provider is willing to bear this disadvantage, the FCC should adopt explicit policies that prevent it from being imposed on new entrants by state or incumbent LEC fiat.

The FCC can address this problem by clarifying its rules to permit carriers to associate NXX codes with rating points other than the physical locations of their switches or the point of interconnection.<sup>18/</sup> This approach will permit CLECs and CMRS providers to ensure that calls to and from their customers are not accidentally subjected to toll charges by virtue of switch locations. Moreover, it will reduce customer confusion that could result from unexpected toll charges on, for instance, calls between next door neighbors. Indeed, for these and similar reasons, some states have considered and, at least in one case, adopted requirements that CLECs

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<sup>17/</sup> For example, in a region with two local calling areas where 80 percent of all calls are within the same local calling area, only 20 percent of all calls actually would be between locations in different local calling areas (and therefore be rated as toll calls). By comparison, however, restricting a CLEC to a single rating point at its switch location, on average, would result in 50 percent of all calls from incumbent LEC customers to CLEC customers being rated as toll calls. An average of 50 percent of all calls in such a scenario would be rated as toll calls because 0 percent of the calls from the local calling area where the CLEC switch was located and 100 percent of the calls from the local calling area where the CLEC switch was not located would be rated as toll calls. Thus, assuming that each local calling area generates the same number of calls, a total of 50 percent of all calls to the CLEC would be rated as toll calls.

<sup>18/</sup> The FCC also should clarify that, for purposes of LEC-CMRS interconnection, the CMRS provider may choose whether the point of interconnection or the initial cell site is used in determining whether calls are eligible for reciprocal compensation. The *Local Competition Order* does not specify that it is the CMRS provider's choice, but only the CMRS provider is in a position to determine whether, among other things, it is feasible to record and tabulate initial cell site information.

obtain sufficient NXX codes to match incumbent LEC rate centers.<sup>19/</sup> Finally, a FCC determination that both CLECs and CMRS providers are entitled to use multiple rating points, regardless of the number or location of their switches, is well within the FCC's jurisdiction, both under Section 251(b) and under Section 251(e), which grants the FCC authority over all numbering matters. Therefore, the FCC should adopt such a clarification of the rules adopted in the *Local Competition Order*.

**IV. THE FCC MUST CLARIFY THAT CMRS PROVIDERS ARE ENTITLED TO SYMMETRICAL COMPENSATION BASED ON THE SWITCHING ARCHITECTURE EMPLOYED BY THE CMRS PROVIDER.**

The FCC must require that principles of symmetrical compensation and nondiscrimination apply whether a CMRS provider interconnects with an incumbent LEC at an end office, a tandem switch or some hybrid thereof. The rule established in the *Local Competition Order*, which provides that states may establish transport and termination rates in the arbitration process that vary according to whether traffic is routed through a tandem switch or directly to the end-office switch (*see id.* at ¶ 1090) fails to account for the variety of switching configurations that CMRS providers and new entrants may employ.

Under the existing rule, an incumbent LEC may apply its rating system for LEC end office and tandem switching technology to CMRS provider networks to assess uneconomically high or otherwise discriminatory charges on CMRS providers. Instead, the tandem and end office functionalities in the CMRS network also should be reflected in the symmetrical compensation arrangement. For example, the distributive properties of cellular networks by

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<sup>19/</sup> See Teleport Communications Group, Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering Plan Administration, filed with the FCC on July 12, 1996, Attachment A.

definition incorporate a tandem switching function. Cell sites are all connected to the cellular licensee's MTSO, where the call is handed off to the landline network. Landline LECs interconnect with cellular carriers at the MTSO and not at the cell site. Therefore, the cellular MTSO serves both an end office function in connecting end user calls and a tandem function in covering the "transport" between and among the cells in the system.<sup>20/</sup> Accordingly, symmetrical compensation requires that, when a cellular licensee interconnects its MTSO with a LEC at the LEC's tandem switch, a tandem-to-tandem charge should apply. Adoption of such a rule clarification will assist the negotiation process because incumbent LECs will not endlessly debate the treatment of a CMRS switch for purposes of compensation.

**V. THE FCC MUST CLARIFY ITS EXISTING RULE TO PROHIBIT LECS FROM ASSESSING IMPROPER ADDITIONAL OR SEPARATE INTERCONNECTION CHARGES ON CMRS PROVIDERS SEEKING ONLY TRANSPORT AND TERMINATION ARRANGEMENTS.**

The FCC must clarify the existing rules to provide that, when a CMRS provider or other requesting telecommunications carrier requests only transport and termination subject to reciprocal compensation, the incumbent LEC is prohibited from assessing a separate or additional interconnection charge on a requesting carrier. Absent such amendment, the rule potentially would allow incumbent LECs to assess a separate interconnection charge in addition to transport and termination charges on CMRS providers even if they have requested, or contracted for, transport and termination only.<sup>21/</sup> This would allow an ILEC to recover profits

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<sup>20/</sup> MTSOs also often route calls directly to and from interexchange networks, which is another tandem function.

<sup>21/</sup> Thus, for example, CMRS providers requesting collocation would pay appropriate charges for that service. In contrast, CMRS providers exchanging traffic at mid-span meets would not be assessed a separate interconnection charge.

unrelated to its network costs and result in an uneconomically high transport and termination rate to the CMRS provider. Such an outcome would be contrary to the requirements of Section 251(b)(5) of the 1996 Act that all telecommunications carriers, including CMRS providers, receive reciprocal compensation for transport and termination of traffic with ILEC networks and of Section 251(c)(2) that interconnection rates be just, reasonable and nondiscriminatory.

The FCC's rule imposes a two-part obligation on LECs with respect to reciprocal compensation. First, it requires that each LEC establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier. *See* 47 C.F.R. § 51.703(a). Second, it prohibits a LEC from assessing charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC network. *See* 47 C.F.R. § 51.703(b). Under the existing rule, therefore, a LEC that assessed an unjustifiable interconnection charge upon a CMRS provider in addition to the reciprocal compensation charge for transport and termination of traffic could still be considered to be in compliance with its reciprocal compensation obligation. This anticompetitive result plainly would be contrary to the reciprocal compensation obligation imposed on LECs by statute. Accordingly, the FCC should amend Section 51.703(b) to provide that LECs are prohibited from assessing any charge in addition to the reciprocal compensation arrangement with respect to carriers who request only transport and termination.

Moreover, amending the definition of LEC reciprocal compensation obligations in this manner would be consistent with the 1996 Act's and the *Local Competition Order's* definitions of "interconnection" and "transport and termination." As the FCC correctly stated in the *Local Competition Order*,

. . . the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish 'reciprocal compensation arrangements for the transport and termination of telecommunications' under section 251(b)(5).

*See id.* at ¶ 176. Section 51.703, however, does not require LEC reciprocal compensation arrangements to conform to this fundamental distinction between interconnection and transport and termination. The FCC should address this omission by explicitly providing that interconnection charges may not be applied to the exchange of traffic under Section 251(b)(5). This clarification would ensure that the FCC's rules remain true to Congress's statutory purpose in viewing interconnection and transport and termination as distinct network functions.<sup>22/</sup>

**VI. THE FCC SHOULD ALLOW THE BILL AND KEEP PRESUMPTION TO BE BASED ON PROJECTED, AS WELL AS HISTORICAL, TRAFFIC AND DEMAND PATTERNS.**

The FCC should reconsider the bill and keep presumption adopted in the *Local Competition Order*. The existing rule improperly limits state authority to adopt a bill and keep presumption for LEC-CMRS interconnection to historic traffic and demand patterns. States, however, also should be encouraged to consider the altered economic incentives created by the 1996 Act to justify a bill and keep presumption based on projected traffic and demand patterns between LECs and CMRS providers on a going forward basis.

Under the FCC's rules, a state may impose bill and keep if it determines that the amount of traffic is roughly balanced in either direction and is expected to remain so, and no showing has been made that asymmetric rates are cost justified under Section 51.711(b) of the Rules.

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<sup>22/</sup> *See* note 21 *supra*.

47 C.F.R. § 51.713(b). A state also may establish a presumption that traffic is roughly balanced in either direction to justify the imposition of a bill and keep regime, but the state's ability to adopt such a presumption is unduly limited. 47 C.F.R. § 51.713(c). By restricting state authority to presume bill and keep to historical traffic patterns, however, this rule improperly limits the use of projected traffic and demand patterns to justify a bill and keep presumption. The effect of this restriction is to make the bill and keep presumption effectively unavailable to existing cellular carriers. It is reasonable, however, to expect that CMRS providers with existing traffic patterns that are not roughly balanced will have new incentives to bring those traffic patterns into balance in the future in light of the reforms established by the interconnection and arbitration provisions of the 1996 Act and the *Local Competition Order*.

A comparison of land-to-mobile traffic patterns in the cellular and PCS context, for example, provides a justification for allowing states to consider projected traffic patterns in adopting a bill-and-keep presumption. Cellular carriers historically have originated more traffic to the landline network than they have terminated because cellular carriers received no compensation for terminating calls. Recent studies show, however, that newer PCS calling plans have resulted in more balanced land-to-mobile traffic.<sup>23/</sup> Similarly, the reforms required by the 1996 Act and the FCC's national pricing standards which will eliminate anticompetitive call termination rates assessed by incumbent LECs and provide for CMRS providers to receive terminating compensation can be expected to produce incentives that will result in more balanced traffic in the future. Therefore, states should be allowed adopt a bill and keep presumption not

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<sup>23/</sup> See, e.g., Sprint Spectrum and American Personal Communications, Joint Initial Comments, filed in CC Docket No. 95-185 on March 4, 1996 at 21 (traffic patterns between LECs and Sprint/APC's system exhibit roughly a 50-50 balance).

only based on historical evidence that traffic is roughly balanced, but also on projected demand or future expectation that traffic will become roughly balanced due to the 1996 Act's regulatory reforms.<sup>24/</sup>

**VII. THE FCC SHOULD REQUIRE INCUMBENT LECs TO FILE EXISTING INTERCONNECTION AGREEMENTS PROMPTLY.**

The FCC should advance existing deadlines, and establish new deadlines where there currently are none, for the filing of existing LEC interconnection contracts for approval by state commissions. Under the FCC's rule, incumbent LECs are not required to file existing interconnection contracts with state commissions for their approval until June 30, 1997. Existing contracts involving non-incumbent LECs are not subject to any filing deadline whatsoever. Remote and indefinite filing deadlines improperly will allow incumbent LECs to game the Section 252 negotiation and arbitration process by delaying the filing of any existing "sweetheart deals" that would otherwise be required to be made available to all other requesting telecommunications carriers on the same rates, terms and conditions. *See* 47 U.S.C. § 251(i).

Existing agreements between incumbent LECs and other LECs provide significant information about current interconnection practices and pricing.<sup>25/</sup> Furthermore, the

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<sup>24/</sup> Limiting state authority to adopt bill and keep presumptions to historical traffic patterns could have a discriminatory impact on cellular carriers vis-a-vis new PCS providers. Cellular licensees should not be deprived of a bill and keep presumption simply because they have a longer history of traffic imbalances due to their having provided service prior to the economic reforms of the 1996 Act, while new PCS providers have no such track record. Encouraging states to consider projected demand and traffic patterns thus would lead to nondiscriminatory and competitively neutral bill and keep presumptions.

<sup>25/</sup> The FCC correctly recognized that it would be entirely contrary to the letter and spirit of the 1996 Act to exempt pre-existing interconnection arrangements from the state commission process. The FCC reasoned that state commissions must have the opportunity to determine whether these pre-existing arrangements include provisions that violate the 1996 Act

nondiscrimination provisions of Section 252(i) require that LECs make interconnection agreements approved by a state pursuant to Section 252(i) available to all other requesting telecommunications carriers on the same rates, terms and conditions. To the extent that existing LEC-to-LEC interconnection contracts contain favorable terms, such as bill-and-keep in extended area service arrangements, a LEC has a strong incentive to withhold filing its contracts with the state for as long as possible to avoid incurring the obligation to make bill and keep available to other telecommunications carriers.<sup>26/</sup> Accordingly, the FCC must adopt stricter deadlines to require LECs to file existing interconnection contracts for state approval promptly in order to expedite the competitive reforms envisioned by the Section 252 interconnection negotiation and arbitration process. Another important benefit of requiring earlier filing is that disclosure of these contracts could materially assist state commissions in gathering information necessary to tackle intrastate universal service and access charge reform.

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or are contrary to the new competitive public interest test the states are to apply. The FCC also identified several significant policy reasons why mandatory filing of interconnection contracts was required. Public filing permits review of the rates, terms and conditions that are being made available to others. Disclosure of agreements allows assessment of what ILECs view as technically feasible and assists in policing against potential discrimination. In contrast, failure to disclose interconnection arrangements could prevent competition, as ILECs might otherwise maintain non-compete clauses or other provisions that act as disincentives to compete and create price barriers to new entrants. The *Local Competition Order* posited the situation where a new entrant would be unable to compete on price if it was unable to obtain the same economic arrangements as neighboring ILECs provide to one another, effectively insulating ILECs from competition. *Local Competition Order* at ¶ 168.

<sup>26/</sup> This is not an insubstantial concern for new competitors. Incumbent LECs on the other hand have no reason to fear disclosure of these contracts. The *Local Competition Order* contemplates that state commissions could determine that aspects of pre-1996 Act interconnection arrangements be reformed to reflect new competitive realities and therefore it is possible these terms might not be extended to third parties.

The *Local Competition Order* properly deals with the claimed ILEC concern that disclosure of contracts may obligate them to extend non-economic arrangements to new entrants. The FCC's pro-competitive determination to require the filing of existing contracts, however, is in danger of being undermined by a timetable that delays the required filings until after the initial rounds of arbitrations and negotiations have concluded.<sup>27/</sup> For all the reasons the *Local Competition Order* articulates, it is essential to the expeditious establishment of competition that existing agreements be available during the state arbitration process, as well as for state proceedings on universal service and intrastate access charge reform.

The FCC should accelerate the timetable it established to require all Class A carriers to file all their agreements with other ILECs before the end of the year, while permitting states to review those agreements on any reasonable schedule. Acceleration does not impose an undue burden on Class A ILECs, who merely would be called on to file contracts that already exist. It would not impose any additional burden on state commissions because the mere act of filing does not require immediate action by the state commission and will provide these commissions with potentially valuable information for state universal service and access charge proceedings.<sup>28/</sup> The information contained in existing agreements is highly relevant to those carriers seeking interconnection through the negotiation and arbitration process and the minimal additional burden

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<sup>27/</sup> Without discussion, the FCC set June 30, 1997 as the date by which Class A ILECs must file their existing arrangements with state commissions. *Local Competition Order* at ¶ 171.

<sup>28/</sup> Because these agreements would not be filed as part of the negotiation process under Section 252, they would not be subject to the time limits for newly-negotiated agreements.